

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #3	CCRB Case #: 201808535	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/04/2018 5:28 AM	Location of Incident: § 87(2)(b)	Precinct: 88	18 Mo. SOL 4/4/2020	EO SOL 11/19/2020	
Date/Time CV Reported Thu, 10/04/2018 10:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/15/2018 10:48 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Luis Alicea	00339	929604	088 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Nicole Burke	02754	922038	088 PCT
2. POM Clifford Perch	17833	930929	088 PCT
3. POM Renan Darbouze	13128	942741	088 PCT
4. POF Ashley Otoole	26057	964194	088 PCT
5. POM Chemner Charles	02839	961682	088 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Luis Alicea	Force: Police Officer Luis Alicea used a chokehold against § 87(2)(b)	§ 87(2)(b)
B.POM Luis Alicea	Force: Police Officer Luis Alicea hit § 87(2)(b) against a wall.	§ 87(2)(b)
C.POM Luis Alicea	Discourtesy: Police Officer Luis Alicea spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Case Summary

On October 4, 2018, § 87(2)(b) filed this complaint with IAB (log no. 2018-39494) (**01 Board Review**). This complaint was subsequently received by the CCRB on October 15, 2018. § 87(2)(b) was unavailable to the investigation and did not provide a verified statement to the CCRB regarding this incident.

On October 4, 2018, Police Officer Luis Alicea, Police Officer Clifford Perch, Police Officer Renan Darbouze, Police Officer Chemner Charles, Police Officer Ashley O'Toole, and Sergeant Nicole Burke, all of the 88th Precinct, responded to a call for an emotionally disturbed person at § 87(2)(b). PO Alicea used a chokehold against § 87(2)(b) (**Allegation A: Force, § 87(2)(g)**), hit § 87(2)(b)'s head against the wall (**Allegation B: Force, § 87(2)(g)**), and spoke discourteously to § 87(2)(b) (**Allegation C: discourtesy, § 87(2)(g)**).

A full investigation was conducted based upon body worn camera (BWC) footage obtained by the investigation (**12 Board Review, 13 Board Review, 14 Board Review, 15 Board Review, 16 Board Review, 17 Board Review, 18 Board Review, 19 Board Review, 20 Board Review**). The investigation obtained BWC footage from PO Alicea, PO Perch, PO Darbouze, PO Charles, and PO O'Toole.

Allegations regarding the forcible takedown of § 87(2)(b) and her subsequent forcible removal to the hospital were not pled. Without a verified statement from § 87(2)(b) the investigation was rendered unable to fully and accurately investigate this allegation.

There were no arrests made or summons issued as a result of this incident.

Findings and Recommendations

Allegation (A) Force: Police Officer Luis Alicea used a chokehold against § 87(2)(b)
Allegation (B) Force: Police Officer Luis Alicea hit § 87(2)(b)'s head against a wall.

§ 87(2)(b) did not provide a statement to the investigation.

EMT's § 87(2)(b) (**15 Board Review**) and § 87(2)(b) (**16 Board Review**), both from the FDNY, responded to this incident. EMT § 87(2)(b) and EMT § 87(2)(b) had vague recollections of this incident, and provided statements largely consistent with one another. They both stated that the call that came over regarding § 87(2)(b) stated that she was violent and aggressive. EMT § 87(2)(b) and EMT § 87(2)(b) did not see PO Alicea use a chokehold against § 87(2)(b).

PO Alicea (**02 Board Review**) stated that he and PO Perch were the last officers to respond to a call regarding an emotionally disturbed person at § 87(2)(b). PO Alicea intended to back other officers and did not receive any instructions on what to do from other officers. When PO Alicea first observed § 87(2)(b) she was seated on a bench talking to PO Darbouze. § 87(2)(b) was speaking loudly and was gesturing demonstratively with her hands while she spoke. PO

Perch approached PO Alicea and stated that he was going to “grab” § 87(2)(b) and told PO Alicea to grab her other arm. PO Alicea agreed, and both PO Alicea and PO Perch approached § 87(2)(b). PO Perch extended his arm towards § 87(2)(b) and said, “Come here.” § 87(2)(b) put her hand out towards PO Perch, as if to shake his hand. PO Alicea reached for § 87(2)(b)’s right arm. When § 87(2)(b) noticed PO Alicea doing this, she flailed her arms, and swiped PO Alicea across his face. PO Alicea was not injured by this. However, PO Alicea was caught off guard that § 87(2)(b) did this, and extended his arm out to push § 87(2)(b) away from him. PO Alicea put his hand around the front of § 87(2)(b)’s neck, and applied pressure around her neck with his hand as he pushed her back. When PO Alicea pushed § 87(2)(b) back, her head hit against the wall behind her. PO Alicea meant to make contact with § 87(2)(b)’s chest and shoulder area, but instead made contact with her neck and throat. PO Alicea thought that § 87(2)(b) was fighting back against him, so he kept his hand around her neck and pushed her head back again against the wall and repeatedly said, “Stop it.” PO Alicea could not articulate a reason as to why he felt § 87(2)(b) was fighting back against him, except that he could “feel” it. § 87(2)(b) was not moving at this time and was not making any motions with her arms. PO Alicea did not hear § 87(2)(b) complain that she could not breathe and did not see any indication that her breathing was obstructed. PO Alicea sustained a scrape to the back of his head during his struggle with § 87(2)(b). PO Alicea did not know specifically when he sustained this injury, but thought that it was sustained later in the incident when he was on the ground with § 87(2)(b).

Footage from PO Alicea’s BWC (**13 Board Review**) shows PO Alicea put his hand around § 87(2)(b)’s neck and hit her head against the wall behind the bench twice, between the 20 second and 28 second mark.

The Threat, Resistance, or Injury Report (TRI) prepared by PO Alicea (**11 Board Review**) shows that PO Alicea noted that he used a forcible takedown against § 87(2)(b) and “other force” used to “hold subject back to restrict her and try to gain control.” The TRI also notes that § 87(2)(b) used the following force against PO Alicea: hand and foot strikes, wrestling and grappling, and pushing and shoving. Lastly, the TRI notes that PO Alicea sustained an injury.

PO Darbouze (**03 Board Review**) stated that he saw PO Alicea make contact with § 87(2)(b)’s neck when PO Alicea was “pushing” § 87(2)(b) away from him and thought that it was “possible” PO Alicea’s hand closed around § 87(2)(b)’s neck. PO Darbouze also saw § 87(2)(b)’s head hit against the wall as PO Alicea made this motion. PO Darbouze did not know how many times § 87(2)(b)’s head hit against the wall. § 87(2)(b) was struggling against the officers, but PO Darbouze did not know specifically what she was doing with her body because everything happened quickly and there were multiple officers present.

Footage from PO Darbouze’s BWC (**12 Board Review**) shows PO Alicea put his arm around § 87(2)(b)’s neck between the 40 second and 48 second mark.

Sgt. Burke (**04 Board Review**) and PO Perch (**05 Board Review**) stated that they did not see PO Alicea use a chokehold against § 87(2)(b) and did not see PO Alicea strike § 87(2)(b)’s head against the wall.

The Aided report (**14 Board Review**) was prepared by PO George Rowen of the 88th Precinct. The narrative of the Aided states that § 87(2)(b) was acting erratically and violently and flailed her arms and legs after being restrained. § 87(2)(b) stated that she has a psychiatric diagnosis but did not recall what it was, what kinds of medications she takes, or when she last took the medication. The Aided further notes that § 87(2)(b) is an emotionally disturbed person, attempted to physically harm others, spoke of harming herself or others, placed herself in a dangerous situation, and physically threatened others.

The Investigating Supervisor's Assessment Report prepared by Captain Danny Murria of the Patrol Borough Brooklyn North (**10 Board Review**) states that PO Alicea had his hands around § 87(2)(b)'s neck and that PO Alicea pushed § 87(2)(b) back against the wall, causing her head to strike against the wall. Captain Murria recommended that the incident be referred to Patrol Borough Brooklyn North for investigation due to the gravity of force used by PO Alicea.

Patrol Guide Procedure 221-02 states that an officer may use only the reasonable force necessary to gain control or custody of a subject (**07 Board Review**).

Patrol Guide Procedure 221-01 defines a chokehold as included, but not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. The patrol guide further states that officers shall not use chokeholds (**06 Board Review**).

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Discourtesy: Police Officer Luis Alicea spoke discourteously to § 87(2)(b)

Footage from PO Darbouze's BWC (**12 Board Review**) captures PO Alicea saying, "You better stop, you better fucking stop" to § 87(2)(b) at the 45 second mark.

According to Patrol Guide Procedure 203-10, officers are prohibited from using discourteous or disrespectful remarks (**21 Board Review**). Police Department v. Pichardo, DAO-DCT Case #201515012 states that officers may use limited profanity towards civilians to gain control of a dynamic situation (**22 Board Review**).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party **(08 Board Review)**.
- PO Alicea has been a member of service for 17 years and has been a subject in five CCRB cases and nine allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of criminal convictions in New York City **(09 Board Review)**.
- As of August 18, 2019, a FOIL request to the New York City Office of the Comptroller is pending.

Squad No.: 3

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date